

1 BARRY SIMON JAMESON  
 CDCR No. C88511  
 2 Pleasant Valley State Prison  
 Post Office Box 8502  
 3 Coalinga, CA 93210-8502  
 No Telephone, Fax nor E-Mail  
 4 Institutional Telephone:  
 (559) 935-4900

5 Petitioner,  
 6 Representing Self and  
 Layman at Law, Under  
 7 Disability of Imprisonment

8  
 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11 OAKLAND DIVISION

12  
 13 BARRY SIMON JAMESON,

14 Petitioner,

15 versus

16 JAMES A. YATES, Warden,

17 Respondent.

C07-03160 SBA

PETITIONER'S OPPOSITION  
 TO MOTION TO DISMISS;  
 MEMORANDUM OF POINTS  
 AND AUTHORITIES

The Honorable  
 SAUNDRA B. ARMSTRONG,  
 District Judge

18  
 19 TO: COUNSEL FOR RESPONDENT, JAMES A. YATES, ELIZABETH S. KIM:

20 Petitioner BARRY S. JAMESON (Petitioner) files this opposi-  
 21 tion to the motion to dismiss made by Respondent on the ground  
 22 that Petitioner has failed to exhaust his state court remedies  
 23 as to his claims (Motion to Dismiss (MTD); 1:24-25), states that  
 24 he has in fact exhausted state court remedies, and contends the  
 25 motion should be denied. Petitioner bases his opposition on this  
 26 opposition to motion to dismiss, his supporting memorandum of  
 27 points and authorities, the pleadings, records and files in this  
 28 case, as well as all exhibits before the Court.

## MEMORANDUM OF POINTS AND AUTHORITIES

## INTRODUCTION

Contrary to what Respondent contends in the motion (MTD; 2:3), California's Indeterminate Sentencing Law (ISL) was repealed in 1977 and replaced with the Determinate Sentencing Law (DSL); therefore, Petitioner was not given "an indeterminate life sentence." Under the DSL, the sentence is determinate, but the term itself is subject to fluctuations regarding earned or taken credits and is indeterminate.

Petitioner received a sentence of 15 years for the Base Term by the Court for his second-degree murder in 1982, with 2 years of enhancements, or 17 years aggregate. The options for his offense are from 15 years to life, but under California Penal Code sections 12 and 13, the Court must make a choice at sentencing between these two options. The Court did, and sentenced Petitioner to 17 years total. California statute mandates that the Court make a choice, the Court did, and upon arriving in prison, Petitioner was told by the California Department of Corrections and Rehabilitation (CDCR) he was serving "Life." This was followed shortly thereafter with promise after promise by release officials that CDCR has a Zero Release Policy and he is never getting out. A sentence of 17 years with the ability to earn halftime credits that would have released Petitioner in approximately 9 years has now resulted in Petitioner coming into prison in his twenties and he is now in his fifties. He has 24 years of actual time with approximately 23 years of credits, or 47 years to credit towards his 17 year promised sentence. He never received "Life" from the Court.

1 Respondent wants the Court to believe that Petitioner was sen-  
2 tenced to "Life," which some California inmates are for some of-  
3 fenses, because if they make such an erroneous claim enough times,  
4 it may be taken as a fact. Respondent cites the Petition at "1.b"  
5 in their motion (MTD; 2:3-4), falsely asserting that Petitioner  
6 himself stated he had "an indeterminate life sentence." A look  
7 at the Petition, p. 1b, will show clearly that Petitioner has  
8 always maintained he was given, as his exhibits demonstrate, a  
9 17-year sentence, with 5 years of parole.

10 Respondent correctly asserts that Petitioner claims he has  
11 been held in prison past his Maximum Release Date (as shown in  
12 the exhibit, e.g., see Petition, Exhibit C), among other claims.  
13 Respondent finally claims that Petitioner has not "exhausted his  
14 state court remedies before bringing his claims to this Court"  
15 (MTD; 2:6-7), and based on this claim, Respondent has moved to  
16 dismiss the Petition.

17 Petitioner has presented the issues in the Petition to the  
18 State's Supreme Court (EXHIBIT A); therefore, Petitioner requests  
19 the Court deny the motion accordingly.

#### 20 ARGUMENT

21 It is well settled that when a state inmate intends to bring  
22 a petition for writ of habeas corpus to the Federal Court(s),  
23 the state inmate must first present the petition to the State's  
24 Highest Court. Under the AEDPA (28 U.S.C. § 2254), a petition  
25 presented to the Federal Court(s) cannot be granted unless the  
26 petition was exhausted in the state courts. (Subsection (b)(1)  
27 (A).) Title 28 U.S.C. § 2254(b) "provides a simple and clear  
28 instruction to potential litigants: before you bring any claims

1 to federal courts, be sure that you first have taken each one to  
 2 state court." Jiminez v. Rice, 276 F.3d 478, 481 (9th Cir. 2001)  
 3 (citing Rose v. Lundy, 455 U.S. 509, 520 (1982)). Thus, the  
 4 California Supreme Court must have been given at least one oppor-  
 5 tunity to review each of Petitioner's federal habeas claims.  
 6 Larche v. Simons, 53 F.3d 1068, 1071 (9th Cir. 1995).

7 Respondent correctly points out that "Petitioner bears the  
 8 burden of proving that he has exhausted his state remedies prior  
 9 to filing his federal petition." Darr v. Burford, 339 U.S. 200,  
 10 218-219 (1950). Petitioner can and he will.

11 One look at EXHIBIT A will show that Petitioner presented  
 12 the issues presented in this petition to the California Supreme  
 13 Court in 2006, and it was denied by the California Supreme Court  
 14 on 16 August 2006. Petitioner received the denial on 21 August  
 15 2006. Therefore, Petitioner has met his burden, and the motion  
 16 to dismiss should be denied accordingly.

17 14 November 2007

18 Respectfully submitted,

19 *Barry Simon Jameson*  
 20

21 BARRY SIMON JAMESON  
 22 Petitioner,  
 23 Representing Self and  
 Layman at Law, Under  
 Disability of Imprisonment

24 Attachment: Exh. A

25 xc All Parties

26 :bsj

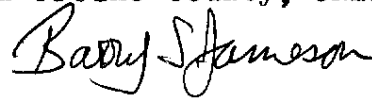
27 / / /

28 / / /

VERIFICATION

I, BARRY S. JAMESON, Plaintiff/Petitioner in this matter, declare under penalty of perjury that the foregoing is true and that this document was executed in Fresno County, California on the date below.

Dated: 14 November 2007



BARRY S. JAMESON  
Verifier-Plaintiff/Petitioner

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PROOF OF SERVICE BY MAIL  
(C.C.P., Sec. 1013(a)) and  
28 U.S.C., Sec. 1746)

I, the undersigned, declare that I am not a party to this action, am over the age of eighteen (18) years, my correct address is P.O. Box 8500, Coalinga, CA 93210-8500 (no telephone, fax or E-Mail), and on the date below I served a document(s) titled:

PETITIONER'S OPPOSITION TO MOTION TO  
DISMISS; MEMORANDUM OF POINTS AND  
AUTHORITIES

on the party(s) named below by placing them into a sealed, postage-paid envelope, and placing them into the United States Postal Service mail system, first-class mail, addressed as:

ELIZABETH S. KIM  
Deputy Attorney General  
State of California  
455 Golden Gate Avenue  
Suite 11000  
San Francisco, CA 94102-7004  
Counsel for Respondent  
JAMES A. YATES, Warden.

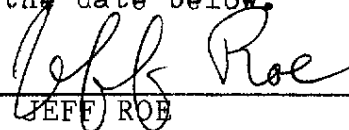
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NOTE: This document served pursuant to the Prison-Delivery Rule, Rules 8.304 and 8.400 (deemed served on date of mailing below).

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I, the undersigned, further declare under penalty of perjury that the foregoing is true and that this declaration was executed in Fresno County, California on the date below.

Dated: 15 November 2007

  
JEFF ROE

Verification/Proof of Service by Mail; Page one of one.

**EXHIBIT A**

S138122

Rec'd  
21 AUG '06  
BJameson

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re BARRY S. JAMESON on Habeas Corpus

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Petition for writ of habeas corpus is DENIED. (See *In re Dannenberg*  
(2005) 34 Cal.4th 1061.)

SUPREME COURT  
**FILED**

AUG 16 2006

Frederick K. Ohlrich Clerk

DEPUTY

**GEORGE**

Chief Justice

NOTED BY US / ATTYA LEBER  
FROM CALIFORNIA DISTRICT COURT

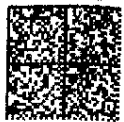
B. JAMESON C88511  
(B2-1192) P.O.B. 8502  
CALIFORNIA, CA  
93210-8502

To:

CLERK OF U.S. DISTRICT  
COURT - NORTHERN  
DISTRICT OF CALIFORNIA  
OAKLAND DIVISION  
1301 CLAY STREET  
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OAKLAND, CA  
94612-5212

CONFIDENTIAL

LEGAL MAIL



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